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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/416,101 10/12/99 DONOVAN

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025537
WORLDCOM, INC
TECHNOLOGY LAW DEPARTMENT
1133 19TH ST, NW
WASHINGTON DC 20036

WM02/1206

EXAMINER

PHAM, B

ART UNIT

PAPER NUMBER

2664

DATE MAILED:

12/06/00

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

[Handwritten signature]
File Copy

Office Action Summary

Application No.
09/416,101

Applicant(s)

DONOVAN et al

Examiner

Brenda Pham

Group Art Unit

2664



☐ Responsive to communication(s) filed on _____

☐ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1035 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire three month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claim

☒ Claim(s) 1-27 is/are pending in the application

Of the above, claim(s) _____ is/are withdrawn from consideration

☐ Claim(s) _____ is/are allowed.

☒ Claim(s) 1-5, 8, 10-14, 17, 19-21, 23, and 26 is/are rejected.

☒ Claim(s) 6, 7, 9, 15, 16, 18, 22, 24, 25, and 27 is/are objected to.

☐ Claims _____ are subject to restriction or election requirement.

Application Papers

☒ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on _____ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some* ☒ None of the CERTIFIED copies of the priority documents have been

☐ received.

☐ received in Application No. (Series Code/Serial Number) _____

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

☒ Notice of References Cited, PTO-892

☒ Information Disclosure Statement(s), PTO-1449, Paper No(s). 2

☐ Interview Summary, PTO-413

☒ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

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Election/Restriction

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:

I. Claims 1-27, drawn to system, method and computer readable medium storing program for controlling customer resources for network traffic delivery, classified in class 370, subclass 230.

II. Claim 28-31, drawn to a memory for storing information, classified in class 370, subclass 368.

2. The inventions are distinct, each from the other because of the following reasons:

Inventions I and II are unrelated. Inventions are unrelated if it can be shown that they are not disclosed as capable of use together and they have different modes of operation, different functions, or different effects (MPEP § 806.04, MPEP § 808.01). In the instant case the different inventions have different modes of operation, different functions, and they have different effects.

3. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification because of their recognized divergent subject matter, and the search required for each Group I, II, III, IV or V is not required for other Group, restriction for examination purposes as indicated is proper.

4. During a telephone conversation with Mr. Paul A. Roberts on 11/27/2000, a provisional election was made to prosecute the invention of group I, claims 1-27. Affirmation of this election must be made by applicant in replying to this Office Action. Claims 28-31 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

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DETAILED ACTION

5. Claims 1-27 have been examined.

Claim Rejections - 35 USC § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 1, 5, 8, 10, 14, 17, 19, 23 and 26 are rejected under 35 U.S.C. 102(b) as being anticipated by **Graham et al** (US Pat. No. 6,097,722), hereinafter referred to **Graham**.

-Consider claims 1, 10 and 19, **Graham** discloses a system, method and computer readable medium for controlling customer resources for network traffic delivery, comprising: tracking network utilization of a group of endpoints on a network to generate group utilization level information corresponding to a current amount of network resource consumption by the group; receiving a message corresponding to a request for network resources for a data flow for one of the endpoints; determining whether the request is to be accepted based on the group utilization level information, the identifier, and a predetermined profile, the predetermined profile being associated with the group and including a network utilization limit, (see figure 1A, 1B, 8, col. 6, lines 14-25), "call control module 140 handles the majority, if not all, of the call requests for virtual private network 170. Centralized call admission control/usage monitor

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module 145 determines whether or not to allow a specific 'call' to access to virtual private network 170."

-Consider claim 5, 14 and 23, **Graham** discloses a system, method and computer readable medium for controlling customer resources for network traffic delivery as discussed above, **Graham** further teaches the step of applying a policy rule, using the group utilization level information, the identifier, and the predetermined profile to determine whether the group exceeds the network utilization limit (see figure 8, col. 7, lines 25-67, col. 8, lines 1-5), "Centralized call admission control/usage monitor module 145 determines what virtual paths and virtual channels are needed and, ultimately, will be connected, depending upon any number of factors, such as virtual path network customer service contract agreement, traffic type, quality of service expectations, and existing or expected traffic load and utilization."

-Consider claims 8, 17 and 26, **Graham** furthermore teaches the step of adjusting the group utilization level information, when the request is accepted, to reflect the installment of the request and the corresponding increase in network resources consumption (see figure 9A, col. 7, lines 35-40), "Moreover, if necessary, depending upon the current load conditions, centralized call admission control/monitor module 145 instructs bandwidth manager module 150 to dynamically adjust the size of each virtual path, virtual channel, and virtual path group with instruction to and from the CAC at specific ATM switches."

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Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 2, 3, 11, 12, 20 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over **Graham et al** (US Pat. No. 6,097,722) in view of **Focsaneanu et al** (US Pat. No. 5,991,292), hereinafter referred to **Focsaneanu**.

-Consider claim 2, 3, 11, 12, 20 and 21, **Graham** discloses a system, method and computer readable medium for controlling customer resources for network traffic delivery as discussed above. **Graham** does not teach the step of forwarding to the router the result of the decision whether to accept the request and the wherein the router is a policy enforcement point (PEP). **Focsaneanu**, in the same field of endeavor, teaches these limitations (see figures 8 and 20). **Focsaneanu** teaches that "Customer requirements are checked by monitoring traffic on a local access at a connection request and/or during the established connection, and the local access is configured according to the transmission requirements. The local access can also be configured in response to the network information." Thus, it would have been obvious to one having ordinary skill in the art at the time of the invention was made to implement the system and method of **Gramham** to include the access module (router) as taught by **Focsaneanu**.

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10. Claims 4 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over **Graham et al** (US Pat. No. 6,097,722) in view of **Focsaneanu et al** (US Pat. No. 5,991,292) further in view of **Vaid et al** (US Pat. No. 6,137,777), hereinafter referred to **Vaid**.

-Consider claims 4 and 13, **Graham** in view of **Focsaneanu** discloses the system and method as discussed above. **Graham** in view of **Focsaneanu** does not specifically teach a server forming a policy decision point, said server including the means for tracking, the means for receiving and the means for determining. **Vaid**, in the same field of endeavor, teaches this limitation (see figures 5, 6, element 505, 605, col. 11, lines 5-20). **Vaid** teaches that A bandwidth management tool 605 is coupled between campus network 601 and router 607, which is coupled to Internet 609. In this embodiment, a LAN or WAN supports a number of different setups and configurations, which are compete for bandwidth to access the Internet. The present tool acts as an arbitrator for implementing rules, enforcing policies, and setting admissions for classes, as well as perform other acts. For this reason, it would have been obvious to those having ordinary skill in the art at the time of the invention was made to implement the system and method of **Graham** in view of **Focsaneanu** to include a firewall server as taught by **Vaid**.

Allowable Subject Matter

11. Claims 6, 7, 9, 15, 16, 18, 22, 24, 25 and 27 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

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Conclusion

12. The prior art made of record and does not relied upon is considered pertinent to applicant's disclosure.

US Patent No. 5,953,338 (Ma et al) discloses a process of monitoring a utilization level of a grouping of a virtual path on a physical interface comprises checking the utilization level of the virtual path, updating an amount of available bandwidth with a maximum threshold for the available bandwidth and setting an overload condition if the amount exceed the maximum threshold and clearing the overload condition if the mount is below the maximum threshold.

US Patent No. 6.088,358 (Tomita et al) discloses an ATM exchange (see figure 1).

13. Any response to this action should be mailed to:

Commissioner of Patents and Trademarks
Washington, D.C. 20231

or faxed to:

(703) 308-6743, (for informal or draft communications, please label
"PROPOSED" or "DRAFT")

Hand-delivered responses should be brought to Crystal Park II, 2121 Crystal
Drive, Arlington. VA., Sixth Floor (Receptionist)

14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brenda Pham whose telephone number is (703) 308-0148. The examiner can normally be reached on Monday-Friday from 9:00 to 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wellington Chin, can be reached on (703) 305-4366.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 305-3900.

Brenda Pham
November 30, 2000


WELLINGTON CHIN
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2600